

Red Flag Gun Confiscation Orders

“Take the Guns First, Go through Due Process... (Never).”

NAGR Position: Strongly Oppose

“Red Flag” Gun Confiscation bills (disingenuously titled Extreme Risk Protection Orders) call for legally owned firearms to be forcibly confiscated from law-abiding Americans without due process, based on unsubstantiated accusations from disgruntled family members, neighbors, co-workers, and/or current or ex-romantic partners, or roommates. In other words: Gun Confiscation without due process.

There has been legislation at the federal level, offering grants to states which implement these dangerous and unconstitutional gun control programs. Blatant bribery to violate Constitutional rights.

The National Association for Gun Rights expects all pro-gun members of the House and Senate to join us in opposing this type of gun confiscation.

Talking Points & References:

- **Gun Confiscation Without Due Process**
 - The proposal would allow a court to issue a so-called “Gun Violence Restraining Order (GVRO)” which involves a court entering a secret order banning someone from possessing firearms or ammunition and confiscating the firearms that an individual already owns. The order and seizure warrant may be issued *ex-parte* (in other words, before any notice at all to the subject of the order).
 - “Red Flag” laws target law-abiding citizens who have not committed a crime, in other words, it’s an unconstitutional “pre crime” program.
 - Such legislation contemplates that the persons who initiate the request for this order are family and/or ex-lovers of the person whose firearms are to be seized. For many people, those two categories are going to be full of people who now dislike them and would be motivated to seek revenge to include lying to the courts. Additionally, these bills provides no penalty for lying to secure a GVRO under a Red Flag gun confiscation law.
 - Such legislation regularly orders accompanying seizure warrants, which are issued without any notice to the subject of the order. You find out when the SWAT team comes to your door to “collect” your guns. The order may be issued using the very weak “reasonable suspicion” standard of evidence. This has happened in multiple states, including an example in Maryland which resulted in the death of the gun owner, putting the lives of local residents and police officers in danger.
 - The court could report these orders to the FBI within two days of issuance, barring the individual from being able to purchase a firearm. Additionally, law enforcement would be obligated to confiscate firearms the individual legally possesses.
 - Only after seizure of the firearms, and entry of the order, can the subject of the order challenge the issuance and beg for their rights and their guns back. **This is not due process.**

- Under most Red Flag laws, the court is expected to hold a hearing within 30 days of the entry of the initial order, after notice has been provided to the subject of the order. At the hearing the State must show “reasonable suspicion” that the person poses a “significant risk” to themselves or to another person. A lesser threshold than “beyond a reasonable doubt” needed in criminal charges.
- There is no qualification requirement for a judge to evaluate an individual’s mental or emotional state when making their judgements. Similar laws for involuntary confinement require multiple mental health experts to evaluate the situation before any action can be taken.
- Most states already have procedures to separate criminally insane individuals and guns.
- **Seizure of Firearms Belonging to Innocent Third parties**
 - Some versions of these bills state that firearms belonging to other persons **besides the subject of the order**, such as other household family members, are also to be seized if the police think the subject of the order can access them.
 - After thirty days, third party persons can ask the court for their firearms back with no guarantee of return.
- **Disgruntled Family Members and Roommates**
 - Under such legislation, family members who oppose the Second Amendment could use something as simple as a pro-gun social media post to assert that a family member should have their gun rights stripped and their firearms confiscated.
 - Under such legislation, disgruntled current or former roommates would also be able to initiate the gun confiscation process.
 - Individuals can be denied their right to self-defense based on any number of emotionally-charged personal disputes, where no crime is committed and no probable cause exists that a crime might be committed.
- **Indefinite suspension of Second Amendment Rights**
 - The subject of the order may, depending on the specifics of the legislation, request a hearing after the fact. In some cases, this has been limited to a single hearing, where if the subject loses, they may not request a new hearing, even if new evidence becomes available or if their life circumstances no longer warrant such a prohibition.
 - Under most proposals, subsequent orders can be renewed indefinitely barring the subject from purchasing a firearm (one year at a time) and having their guns returned to them (three years at a time).
 - For some, this may amount to a lifetime Second Amendment ban.

Some bills do not state what will happen to confiscated firearms if they are not returned to the owner, and the owner does not arrange for transfer to a dealer for resale. Will the firearms be destroyed, resold, or otherwise disposed? Will the accused be compensated for the value of the stolen property?

Bottom Line: So-called Red Flag laws are GUN CONFISCATION ORDERS.